

Appl. No. 10/787,297

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**REMARKS/ARGUMENTS****Claim Amendments**

Claims 5, 14 and 23 have been rewritten in independent form.

**35 U.S.C. § 103 Claim Rejections****The Law**

Courts have interpreted 35 U.S.C § 103(a) as a question of law based upon a review of the underlying facts. As the Federal Circuit has stated:

Obviousness is ultimately a determination of law based on underlying determinations of fact. These underlying factual determinations include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the extend of any proffered objective indicia of nonobviousness.

**Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH**, 45 U.S. P.Q.2d 1977, 1981 (Fed.Cir.1998).

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. An obviousness inquiry requires a review of a number of factors, including the background knowledge possessed by a person having ordinary skill in the art, to determine whether there was an apparent reason to combine the elements of the prior art in the fashion claimed by the present invention. *KSR Int'l v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S., Apr. 30, 2007). For the Patent Office to combine references in support of an obviousness rejection, the Patent Office must identify a reason why a person of ordinary skill in the art would have combined the references Id. at 15. Even if the Patent Office is able to articulate and support a suggestion to combine the references, it is impermissible to pick and choose elements from the prior art while using the application as a template. *In re Fine*, 837 F. 3d 1071 (Fed. Cir. 1988).

The 35 U.S.C §103(a) rejection is deficient for its failure to comply with the U.S. Supreme Court's requirements recently articulated in *KSR*.

**The Present Invention**

Claim 1 is directed to a method of talk request processing in a do-not-disturb capable communication system. Claim 1 recites, in part, "selectively overriding DnD functionality". The DnD functionality is selectively overridden based on an ignoreDnD attribute for the user device. The DnD attribute is applied to a criteria or condition of the talk request other than a user device

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identifier.

This means, for example, that DnD functionality may be activated in a communication system which is intended to prevent communication sessions from being established. The DnD functionality can be selectively overridden. In other words, the DnD functionality can be overridden if certain conditions are met, but otherwise is operative to block communication sessions. The selective overriding is based on an ignoreDnD attribute for the user device.

Independent claims 10 and 20 include comparable limitations.

Rejection based on Siemens and Otha

The Examiner has rejected claims 1 to 4, 9 to 12, 18, 20, 21, 26 and 27 as unpatentable over Ericsson, Motorola, Siemens, Nokia Technical Specification (Push to Talk over Cellular (PoC); User Requirements, PoC Release 1.0; User Requirements V 1.1.1 (2003-10) hereinafter, "Ericsson") in view of Otha C. Lee et al. (U.S. PAT. 3,564,148 hereinafter, "Otha").

The Examiner has described Ericsson in the identical language the Examiner used in the previous Official Action. The Examiner refers to paragraph 5.8, paragraph 5.10 and paragraph 6.2.1.1 of Ericsson.

Paragraph 5.8 of Ericsson describes a do-not-disturb function. Paragraph 5.8 recites that "if the invited user has DnD active, the inviting or added user shall receive an indication that the invited user is busy" and "...a user shall be able to easily active and deactivate the DnD function." Thus, Ericsson teaches a DnD function which may be activated or deactivated. Paragraph 5.8 does not disclose "selectively" overriding the DnD function. It is either completely active or inactive. There is no "ignoreDnD" attribute for a user device which is used to determine when the DnD functionality is selectively overridden. Paragraph 5.8 does not teach any selective overriding of the DnD function.

Paragraph 5.10 of Ericsson teaches that the system may have an accept list and a reject list. "On the accept list, the user maintains users and/or groups from whom the user accepts to receive instant talk session request" and "... on the reject list, the user maintains users and/or groups

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from whom the user does not accept to receive instant talk session requests.” These accept and reject lists are not tied into the do-not-disturb functionality. These accept and reject lists are totally separate. If the do-not-disturb functionality is inactive, the accept and reject lists are used to determine which calls go through. If the do-not-disturb functionality is active, then no call goes through irrespective of whether the inviting user is on the accept or reject list. The accept and reject lists are not used in any way as “an ignoredDnD attribute for the user device”. These accept and reject lists in no way correlate to what happens when the do-not-disturb function is active or inactive. Thus, they do not in any way supply an ignoredDnD attribute for the user device.

Paragraph 6.2.1.1 describes how a call is set up from the perspective of an inviting user. The Examiner has alleged “the systems shall check the inviting user registered (read on update the ignoreDnD), incoming session are not blocked (read and ignoreDnD) for any reason when DnD is active.” As noted in our previous response, this is inconsistent with what is stated in paragraph 5.8 which says that “calls are blocked when the DnD is active”, rendering Ericsson inconsistent. Further, even based on the wording of paragraphs 6.2.1.1 as written, this paragraph does not teach selectively overriding a do-not-disturb function based on an attribute of the user device, as alleged by the Examiner. There is no “selection”. In paragraph 6.2.1.1, if the DnD is active, then the incoming session is not blocked for any reason. In other words, there is no way to selectively override the DnD function; if DnD is active, based on the wording of this paragraph, all calls go through.

Ericsson is simply an example of the prior art shown in Figure 1 of the present application.

In summary, Ericsson does not teach any means by which a do-not-disturb function can be selectively overridden. The do-not-disturb function taught in Ericsson always either blocks all session requests or passes all session request. There is no mechanism to “selectively override the do-not-disturb functionality” in any way, much less in the manner claimed which is based on “an ignored DnD attribute for the user device applied to a criteria or a condition of the talk request other than a user device identifier”.

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The Examiner points to Otha as teaching "selectively overriding DnD functionality based on a condition or criterion of the call other than a user device identifier (abstract)." The abstract of Otha states that "the operator has the option of overriding the do-not-disturb condition in an emergency without changing the state of said circuit". Otha nowhere teaches "an ignoreDnD attribute for the user device". The abstract of Otha merely states that an operator may chose to override the do-not-disturb condition. The operator making such a choice is not an "ignoreDnD attribute for the user device". The operator's decision on overriding the do-not-disturb is in no way based on "an ignoreDnD attribute of the user device"; it is a decision solely made by the operator. Thus, Otha does not teach "an ignoreDnD attribute for the user device applied to a criteria or condition of the talk request".

The Examiner further states that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, selectively overriding DnD functionality based on a condition or criterion of the call other than a user device identifier, as taught by Otha, in order to employ an automatic switching system to enable manual control of visual indicators at individual telephone extensions of a private branch telephone exchange." Nowhere in this statement does the Examiner even allege the "ignoreDnD attribute for the user device".

Further, Otha was filed in 1968 and relates to a PBX that would be manually operated by a human telephone operator. The passage in the abstract referred to by the Examiner is not further detailed in the description of Otha. One of ordinary skill in the art working in the field of Ericsson would therefore not be motivated to look to the art of Otha. The very dated telephone exchange system run by a human operator of Otha is not within the same field of Ericsson. Accordingly, a person of ordinary skill in the art would not be lead to combine Otha and Ericsson.

In view of the forgoing, Applicant submits that independent claims 1 and 10 are inventive over Ericsson and Otha either alone or in combination and the Examiner's prior art rejection of claims 1 and 10 should be withdrawn.

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The Examiner had rejected claim 20 on the same basis as the rejection of claims 1 and 10. Applicant submits that claim 20 is inventive over Ericsson and Otha for the reasons outlined above.

The remainder of the rejected claims in this group are dependent claims and are inventive for at least the same reasons as their base claim.

Further, the Examiner has rejected claim 3 stating that Ericsson teaches the ignoreDnD attribute comprising an ignored DnD flag. The Examiner again points to paragraph 5.10 of Ericsson. As previously submitted, the access list management of Ericsson is in no way tied in with the do-not-disturb functionality. The access list does not comprise an ignoreDnD flag. The access list has nothing to do with the DnD function. The DnD is either turned on or off. It is in no way affected by the access list.

Regarding claim 4, the Examiner reference to (page 6 [00078]) is not relevant to Ericsson. Again, the Applicant reiterates that Ericsson does not teach any ignore reasons or values tied to the do-not-disturb functionality.

Rejection based on Siemens, Otha and Griffiths

Claims 13, 19, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ericsson in view of Otha and further in view of Griffiths (U.S. PUB. 2002/0186827).

In the Official Action of August 28, 2006, the Examiner conceded that Griffiths does not teach "selectively overriding DnD functionality for the requested communication system as a function of an ignoreDnD attribute for the user device". Thus, Griffiths does not overcome the deficiency of Ericsson and Otha outlined above. For at least this reason, Applicant submits that claims 13, 19, 22 and 25 are inventive over Ericsson, Otha and Griffiths either alone or in combination.

Allowable Subject Matter

Applicant gratefully acknowledges the indication that claims 5 to 8, 14 to 17 and 23 would be allowable if rewritten in independent form. Claims 5, 14 and 23 have been rewritten in independent form. Claims 7 to 8 and 15 to 17 depend from claims 5 and 14, respectively, and are

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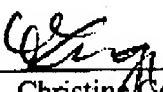
allowable as dependent on an allowable base claim.

Applicant notes that the corresponding claims have been allowed in the corresponding European application without the present amendment to claims 5, 14 and 23.

In view of the foregoing, early favorable consideration of this application is earnestly solicited. In the event that the Examiner has concerns regarding the present response, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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